

***Before the
Federal Communications Commission
Washington, D.C. 20554***

APR 15 1996

In The Matter of

**Amendment of Part 20 and 24 of the
Commission's Rules -- Broadband
PCS Competitive Bidding and the
Commercial Mobile Radio Service
Spectrum Cap**

WT Docket No. 96-59

**Amendment of the Commission's
Cellular PCS Cross-Ownership Rule**

GN Docket 90-314

DOCKET FILE COPY ORIGINAL

COMMENTS OF

WPCS, INC.

Of Counsel:

Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, Virginia 22102
Telephone: (703) 714-1300
Facsimile: (703) 714-1330
e-mail: helein@digitalnation.com

Dated: April 15, 1996

Introduction. WPCS, Inc. (“WPCS”) is a small business, block C PCS bidder, based in Little Chute, Wisconsin. By its attorneys, WPCS submits its initial comments in the above-captioned proceedings.

In General. WPCS supports the concurrent auctioning of the D, E and F frequency blocks. Indeed, given the advantages to the marketplace non-entrepreneurial entities already enjoy, the F block frequencies should be auctioned before D and E blocks. WPCS does support streamlining the F block auction procedures by eliminating the requirement for audited financial statements to support reports of gross revenue and total assets; reducing up-front payments; reducing downpayments; and reducing installment payment plans.

However, WPCS opposes the lessening of the restrictions on the ability of designated entities’ ability to transfer F block licenses during the five year period following license grant. WPCS opposes this change, at this time, because it is likely to undercut the goals of having small businesses participate in the telecommunications “revolution” presented by PCS technology. If block F winners may traffick in their licenses, it is likely they will do so by effecting a sale to block A and B licensees. This will make it all the more difficult for smaller licensees to compete. WPCS would favor a modified restriction allowing the sale of the block F licenses to another qualified designated entity.

Control Group Structure. WPCS urges the Commission to adopt the following policies for processing the D, E and F frequency blocks:

- The Commission should make the control group minimum 50.1 % equity option available to small businesses and entrepreneurs, as it did in the C block auction;
- This proposal should be extended to all small businesses;

- WPCS reserves judgment on the alternatives suggested by the Commission to: (1) simplify or abandon both control group equity structure options, currently offered to F block applicants and, for example, provide only that gross revenues and assets of controlling principals in the applicant, together with any affiliates, be aggregated to determine eligibility; or (2) aggregate the gross revenues and assets of controlling principals and any investor that has an interest in the applicant that exceeds a certain percentage, for example, using only the gross revenues of investors with an ownership interest of 25% or more in the applicant, for aggregation purposes, with the assets of controlling principals.

WPCS will review the initial comments of others and may submit reply comments based on that review.

WPCS submits there is a need to make adjustments to the financial eligibility threshold for the F block auction in light of the value of the C block licenses obtained by C block auction winners. C block winners must **not** be disqualified from acquiring F block licenses based on the valuation of their C block licenses. The Commission should simply allow any qualified C block bidder to bid on F block licenses. First, block C winners should not be penalized for their entrepreneurial success. Second, it is inconsistent with the auction philosophy for the FCC to disqualify entities which have proven to have the resources to successfully bid to employ and exploit in the public interest the Nation's frequency resources.

Affiliation Rules. WPCS submits that the Commission's decision not to make any changes to its exemption to the affiliation rules for Native Americans is correct. The Commission must continue the affiliation exception for Indian tribes based on the Commerce Clause.

The Commission should, however, in light of the exceedingly high bids received for block C frequencies, remove any artificial barriers to the use and employment of financial resources from whatever legitimate sources exist. The legal, policy and equitable arguments supporting this position have been set out in a pending Petition for Reconsideration filed August 21, 1995, by the Oneida Tribe of Wisconsin of the Competitive Bidding Sixth Report and Order, PP Docket 93-253, 60 FR 37 786 (July 21, 1995). Moreover, as there are indications that foreign ownership interests may be advancing financial assistance for block C bidders,¹ it is contradictory to apply such a narrow hard and fast rule to a clearly American source of revenues to aid in the small business deployment of PCS technology.

The Commission seeks comment on whether the second exception to the affiliation rules should be applied in the F block auction. The second exception provides that the gross revenues and assets of affiliates controlled by minority investors, who are members of the applicant's control group, are not attributed to the applicant for determining compliance with eligibility for participation in the entrepreneur's auction. The Commission then modified the minority affiliation rule for block C to allow all small business applicants to exclude any affiliate who would otherwise qualify as entrepreneurs by having gross revenues under \$125 million and total assets of under \$500 million, as long as their total assets and gross revenues, when considered on a cumulative basis and aggregated with each other, did not exceed these same amounts (the \$125 million in gross revenues and \$500 million in total assets). WPCS favors extending the modified

¹ See Letter of GO Communications, Inc., dated March 12, 1996 to Chairman Reed Hundt.

second exemption to the affiliation rules for the F block. At the same time, however, WPCS urges the Commission to apply as flexible an approach to all restrictions.

WPCS submits that the modified minority investor exception serves the public interest, regardless of the potential that the smaller F block licenses (compared to C block licenses) may have lower values.

Installment Payment. It appears that, given the potential for litigation, the Commission has no choice but to modify the rule to eliminate special provisions tied to minority or women-owned business status. For similar reasons, it would appear that the Commission must provide for three installment payment plans, based solely on financial size as it did with the C block; that the most favorable installment payment plan should be made available to all small businesses, including the six-year interest-only period

Bidding Credits. The Commission should not eliminate bidding credits for F block bidders; but, should it decide to do so, in their place, the Commission should extend a single bidding credit to all small businesses as it did for C block.

While logic suggests, perhaps, that smaller bidding credits for F block bidders than that offered to C block bidders is appropriate because of the anticipated lower value of 10 MHz licenses, there is no evidence to support such logic. Conversely, given the more difficult competitive position F block winners will face, it is no less important that they have the same financial advantages accorded block C winners.

Definition of Small Business. Under the definitions of small business, the Commission asks whether its definition continues to be appropriate. This is no simple question. However, defining small businesses by reference to the threshold of average gross revenues of not more than

\$40 million appears to be too narrow. For example, \$40 million is .05% of AT&T's most recently reported gross revenue figure of \$78 Billion which may be competing against the new F block licensees. Then too, the fact that F block licensees will have access to only 10 MHz of spectrum will make their ability to profitably exploit their licenses all the more problematic. It may be unworkable to continue to attempt to apply a one-dimensional criteria to define small business. WPCS will read other comments and attempt to clarify its own position in the reply round of comments on this issue and the others raised by the Commission in this section of its NPRM, e.g., whether, as an alternative, it would be feasible to establish an appropriate small business size applicable to all CMRS services;

WPCS has already commented in opposition to including the value of a C block license as part of the gross revenue calculation for F block bidders. Finally, WPCS believes that the Commission's consideration of modifying its affiliation rules instead of, or in addition to, modifying its small business definition, has merit and should be pursued.

Rural Telcos. WPCS will reserve comment on the issues raised on the rural telephone exception, and the potential impact of the Telecommunications Act of 1996.

D & E Blocks. The Commission should **not** extend the small business provisions to the D and E blocks, without also making these bands available only to entrepreneurs. WPCS is concerned that the Commission's "conclusion" is not close to being correct, that is, that extension of small business advantages in the auctioning process (such as installment payments) could result in disseminating licenses in D and E blocks to a wider variety of applicants. Rather, it would seem that providing financing benefits to the non-entrepreneurial segment of the industry will simply lead to large companies gobbling up even more spectrum than they have already.

In regard to the issue of adjusting for lower values of 10 MHz licenses, WPCS recommends the following:

- the F block rules establishing the discounted upfront payments and reduced downpayments for entrepreneurs should be adjusted;
- a discounted upfront payment is necessary to encourage participation in the F block auction;
- the Commission should **not** increase the required upfront payment to 2 cents per bidding unit or more in order to minimize the possibility of insincere or frivolous bidding and bidder default;
- a reduction in the downpayment requirement would facilitate participation in F block auctions;
- a reduced downpayment will be sufficient to demonstrate a winning bidder has the necessary financial capabilities to complete payment for the license and pay the cost of constructing the system;
- the Commission need **not** increase the required downpayment to 20% of the winning bid in order to guard against the possibility of bidder default; and
- a higher payment requirement is apt to hinder growth and access to capital.

WPCS expresses no current position on the following issues, but reserves possible comment for the reply round:

- whether the discounted upfront payment is sufficient to ensure that only serious and qualified bidders participate in the F block auction; and

- whether the discounted upfront payment amount is an adequate measure of a bidder's ability to pay for the licenses it might win and to meet the Commission's build-out requirements.

Trafficking. On the rules regarding holding of licenses, the Commission, while considering that some measure is still needed to discourage speculators, concluded that its transfer restrictions for F block licenses may be too restrictive. It, therefore, proposed to amend the holding requirement to let all F block licensees transfer their licenses within the first three years to an entity that qualifies as an entrepreneur. WPCSs supports this proposal.

PCS/Cellular Cross-Ownership. WPCS will reserve comment on the issues set forth on this topic.

20% Attribution Standard. WPCS favors a provision providing that any entity owning a 20% interest in a cellular licensee is precluded from obtaining a broadband PCS license, in excess of 10 MHz, in a service area that overlaps the cellular licensees' CGSA. WPCS reserves comment on the remaining issues at this time.

Ownership Disclosure. Present ownership disclosure provisions essentially require disclosure of 5% or more ownership interest, and winning F block bidders' long form applications currently must disclose, separately and in the aggregate, gross revenues and total assets, plus the gross revenues and total assets of their affiliates, their control group members, their attributable investors and affiliates of their attributable investor. Also, applicants must list and summarize all agreements that support their eligibility for an F block license and any investor protection agreements. WPCS favors the Commission proposals to amend its rules as follows:

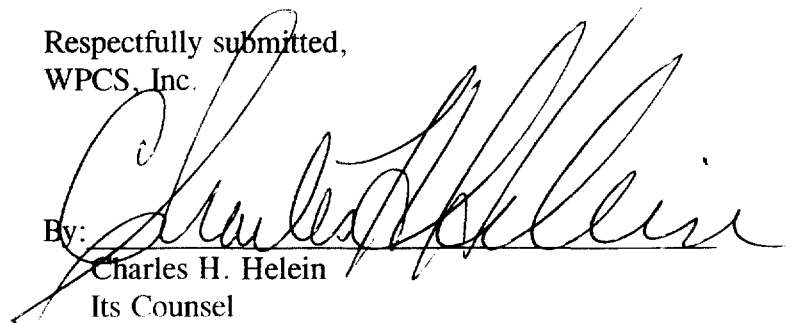
- To eliminate the information disclosure requirements and require only the disclosure of attributable stockholders' direct attributable ownership in other businesses holding or applying for CMRS and private mobile radio services licenses;
- the Commission should further reduce the scope of information required by its general PCS rules for either the short form or long form filing stages; provided that applicants make their ownership documentation available during or after the auction;
- applicants need not use audited financial statements, but may provide a certification from their chief financial officers that the gross revenue and total asset figures are provided in the short form and long form applications are true, complete and accurate and that the applicant does not have the audited financial statements otherwise required by the rules; and
- applicants should continue to be allowed to rely upon either fiscal years or calendar years in providing their gross revenues and should **not** be required to base their size calculations on the most recent four quarters.

Auction Schedule. The Commission should **not** auction the D and E blocks before the F frequency block. WPCS submits that the F block be auctioned before D and E blocks to level the headstart non-entrepreneurial entities already have with the award of A and B licenses. Alternatively, WPCS believes there is little choice other than to support simultaneous multiple round auctions of D and E blocks with the F block frequencies. Bottom line, there is no need to

provide the large licensees with additional "time-to-the-marketplace" advantages they are not now already exploiting with the award of the A and B block licenses.

Respectfully submitted,
WPCS, Inc.

By:

A handwritten signature in black ink, appearing to read "Charles H. Helein", is written over a horizontal line. The signature is fluid and cursive.

Charles H. Helein
Its Counsel

Of Counsel:

Helein & Associates, P.C.
8180 Greensboro Drive, Suite 700
McLean, Virginia 22102
Telephone: (703) 714-1300
Facsimile: (703) 714-1330
e-mail: helein@digitalnation.com

Dated: April 15, 1996